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No. 1015

In the

Supreme Court of the United States

OCTOBER TERM, 1963

82

TEXAS STATE AFL-CIO, ANTONIO AGUILAR, JULIA AMAYA, *et al*,

Petitioners,

v.

ROBERT F. KENNEDY, ATTORNEY GENERAL, and RAYMOND F. FARRELL, COMMISSIONER OF IMMIGRATION AND NATURALIZATION,

Government Respondents,

and

THOMAS ALVARADO (LUGO), CARLOTTA ARELLANES (LEYVA), CONCEPCION AURORA CAGIGAS FRAIJO, *et al*

Intervenor Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

CHARLES J. MORRIS,
1601 National Bankers Life Bldg.,
Dallas 1, Texas
Attorney for Petitioner

Of Counsel:
MULLINAX, WELLS, MORRIS & MAUZY
WOLL, MAYER & ST. ANTOINE

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Intervenor Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioners[1] respectfully pray that a writ of

[1]Petitioners are the Texas State AFL-CIO, a labor organization, and the following 180 individuals: Antonio Aguilar, Julia Amaya, Arthur Lee Avant, Herman James Backler, Thomas Barlow, Antonio Bocanegra, Ramon Casarez, Henry A. De La Garza, Gregorio Del Rio, Roberto C. Dominguez, Ernestina Enriquez, Armando Garcia, George Graddy, Jr., Leonard H. Henley, Guadalupe Hernandez, Aloys J. Kesl, Hector V. Leon, Jack L. Mahaffey, Alberto Martinez, Augustine Marquez, George E. Montuth, James T. Nakovic, Altagracia B. Ocon, Jesus Ocon, Carlos Pacheco, Hector Pacheco, Angel Rodriguez, Leonardo Ruiz, Angel Salazar, Jose H. Salazar, Enrique Sanchez, Joe Dale Scott, Carlos I. Soto, James Sprecker, Armando Tellez, Roberto Tellez, Bernardino Torres, Armando Vargas, Daniel B. Villegas, James E. Wright, Severo Adame, Armando Barragan, Ramona G. Bill, Hector F. Castro, Vicente Esquivel, Emeterio Favela, Jr., Jose S. Garza, Francisco Guanajuato, Guadalupe E. Guz-

certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in the above case. Judgment was entered on February 6, 1964, and Petition for Rehearing was denied on March 18, 1964.

Opinion Below

The United States District Court for the District of Columbia dismissed this action without opinion.[2] The original opinion of the Court of Appeals has not yet been officially reported. It is unofficially reported, however, at 49 CCH LC ¶18,843, and is

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man, Preciliano B. Ibarra, Jose G. Jimenez, Salavador Jimenez, Arturo Martinez, Juan R. Martinez, Manuel Nieto, Ramiro Olivares, Rogelio Patino, Jose Barrera Salas, Juanita C. Salas, Esperanza G. Sandoval, Margarito Sandoval, Felix San Miguel, Jr., Josefina G. San Miguel, Juan Hernandez Tristan, Enrique Villegas, Pedro Aguero, Sr., Felix Alva, Velia Barragan, Gilberto Cantu, Rodolfo Cantu, Toribio G. Cantu, Martiniano Cardenas, Ernesto Chavez, Jesus Chavez, Ruperto Chavez, Manuel Cruz, Theodore R. Delapass, Andres Dimas, Leopoldo Dominguez, Dolores Elizondo, Francisco Fernandez, Nieves E. Gallardo, Arturo V. Garcia, Ramon Garcia, Victor M. Garcia, Martha Gonzalez, Rufino Granado, Rafael Guerra, Maria Jesus Hernandez, Ramon Hilaro, Jose A. Juarez, Jr., Aida Leyva, Santiago R. Licon, Daniel Lombrano, Diana Lozano, Julia Maldonado, Roas Maria Maldonado, Celestino Mata, Encernacion Mata, Jose Mata, Jose Mendoza, Heriberto Molina, Benito Moreno, Carlos Moreno, Jr., Maria Azucena Moreno, Maria Guadalupe Moreno, Oscar Noriega, Reynaldo C. Paez, Hector L. Pearson, Jose G. Quintanilla, Jose Angel Ramirez, Alfredo Andres Ramon, Jr., Pable Renteria, Antonio D. Rodriguez, Jesus M. Rodriguez, Roberto Rodriguez, Tiburcio Rodriguez, Juan Rogerio, Oscar M. Rogerio, Ricardo Rogerio, Raul Sanchez, Juan Saenz, Aniceto M. Sauceda, Emilia M. Sauceda, Ernestina Schunior, Ildefonso Sernz, Jr., Leopoldo Serna, Blas Solis, Genero S. Solis, Carlota C. Tijerina, Lino Torres, Daniel M. Valdez, Alberto Vargas, Abraham Vasquez, Adelina Vasquez, Cruz Vasquez, Mary Becerra, Maria N. Canales, Elidia Cano, Ernestina C. Garcia, Roberto Garcia, Leonelo H. Gonzalez, Antonio Hernandez, Roberto Martinez, Jose I. Ramirez, Jose Garza Ramos, Jr., Basilio Reyes, Jose Saenz, Marcelo M. Soliz, Hermila Soto, Eleno Soza, Ofelia Vasquez, Alfredo Z. Alanis, Ernesto Z. Alaniz, Raul Atkinson, Juan M. Balli, Juvenino Barbosa, Ralph Delgado, Feliciana E. Elizondo, Oralia Elizondo, Francisco Fuentes, Jose C. Garcia, Manuel S. Garcia, Jessie Garnello, Telesforo Garza, Guillermo C. Hernandez, Tomas Hull, Manuel Moran, Maruicio Moran, Victor Manuel Moran, Jesus Moreno, Juan Pena, Rodolfo Revuelta, Daniel Rodriguez, Manuel Rodriguez, Elijio Ruth, Alfonso A. Trevino, Eliseo S. Trevino, Jose R. S. Trevino and Jose Villegas.

[2] The District Court Judgment may be found at p. 8 of the Joint Appendix in the Record.

printed in Appendix B (pp. 23a-28a), *infra*. The Order of March 18, 1964, amending the Court of Appeals opinion, is printed in Appendix C (pp. 29a-30a), *infra*. The Order of March 23, 1964, vacating the aforesaid March 18 Order and further amending the said opinion, is printed in Appendix D (pp. 31a-32a), *infra*.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on February 6, 1964. Timely petition for rehearing was overruled on March 18, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Questions Presented

1. Whether 188 individual plaintiffs, representing a class of thousands of working people who reside in Texas counties bordering on Mexico, who have suffered unemployment because thirty to fifty thousand Mexican commuters cross the border daily to employment in the United States, have suffered a "legal wrong" or have been "adversely affected"—

(a) by the action of the United States immigration authorities in according such Mexican commuters the status of *immigrants* "lawfully admitted for permanent residence" although such commuters fail to establish or maintain residence in the United States pursuant to the Immigration and Nationality Act of 1952, and

(b) by the refusal of said immigration author-

ities to require such commuting aliens to enter only as *non-immigrants* under Sections 101(a)(15)(H)(ii) and 214 of said Act, which provide, as a requisite for entry and employment of aliens entering to perform "services or labor," that "unemployed persons capable of performing such service or labor cannot be found in this country" and that the admission of such aliens "shall be for such time and under such conditions as the Attorney General may by regulations prescribe,"

and whether, therefore, said 188 plaintiffs have standing under the Administrative Procedure Act to seek judicial review of such action and inaction by said agency.

2. Whether a labor organization has standing to seek judicial review of such action and inaction by said agency—

(a) when such labor organization represents members of the same class as the aforesaid individual plaintiffs,

(b) when it and its component labor unions have suffered from said agency action and inaction because said commuting aliens have provided employers with a virtually endless supply of workers who are willing to work for low wages and, because of their precarious status as "immigrants" and their residence in a foreign country, are almost guaranteed to be non-union.

(c) when said commuting aliens prevent or discourage labor organizations in this country

from engaging in legitimate strike activity because said aliens provide an available source of strike breakers, and

(d) when the judicial review here sought concerns statutory provisions which were expressly included in the aforesaid Act, in response to the pleas of organized labor, to "provide for the protection of American labor against an influx of aliens entering the United States for the purpose of performing skilled or unskilled labor where the economy of individual localities is not capable of absorbing them at the time they desire to enter this country."

3. Whether, under the Immigration and Nationality Act of 1952, the status of aliens "lawfully admitted for permanent residence" may be conferred upon and retained by Mexican nationals who fail to establish or maintain residence in the United States, who continue to reside in Mexico and who commute daily to employment in the United States.

Statutes Involved

The statutes involved and referred to herein are the Administrative Procedure Act of 1946 (60 Stat. 237, *et seq.*, 5 U.S.C. §1001 *et seq.*) and the Immigration and Nationality Act of 1952 (66 Stat. 163, 8 U.S.C. §1101 *et seq.*), pertinent provisions of which are set out verbatim in Appendix A (pp. 1a-23a).

Statement of the Case

This is an action for injunctive relief in the nature of mandamus and for a declaratory judg-

ment in which residents of the Texas border communties of El Paso, Del Rio, Laredo, McAllen, and Brownsville, joined by the state-wide Texas State AFL-CIO, seek relief from a high level of unemployment and a low level of wages caused by the practice of Mexican residents using their status as *aliens admitted for permanent residence in the United States* as an "amiable fiction"[3] to permit them to commute daily across the Rio Grande to employment in this country. Government respondents, who are charged with administration of the immigration laws, admit that they have "knowingly permitted" the entry of such commuters "having the status of aliens lawfully admitted for permanent residence under the Immigration and Nationality Act of 1952." [J.A. 28]

There is no way of knowing the exact number of these "immigrants" who reside in Mexico and commute to employment in this country. Nor is there any way to determine the identity of such persons, for the United States government maintains no records differentiating such commuters from bona fide immigrants who actually reside in the United States. The commuter's status, being fictional, is not mentioned in any statute or in any federal regulation. The record, however, discloses estimates of 30,000 to 50,000 such persons who commute daily. [J.A. 17, 71, 78, and 84].[4] The

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[3] A term used by District Judge Luther Youngdahl in *Amalgamated Meat Cutters v. Rogers*, 186 F. Supp. 114, 119, quoting Gordon & Rosenfield, "Immigration Law and Procedure," (1959) p. 127.

[4] In order to determine the number of aliens coming to work locally in El Paso from Juarez, the Immigration and Naturalization Service conducted a "survey" at the border crossing stations [J.A. 78].

record also discloses an established practice whereby commuters furnish United States addresses to employers and governmental officials [J.A. 71-72, 78].

Because the commuters enter and work in United States border cities without regulation, many U. S. residents have been driven out of the employment market in those cities,[5] and wages have been depressed to substandard levels. The commuter accepts low wages because he and his family reside across the border where living costs and living standards tend to be substantially below those prevailing in the United States. Commuter wages tend to be so low that a Department of Labor Report, on file herein, characterized them as "symbolic of peonage." [J.A. 72][6] Another Department of Labor Report concluded that "the willingness of the commuter alien to work for possibly substandard wages

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[5] Unemployment rates in the border counties of Texas are among the highest in the United States. The trial court was asked to take judicial notice of the following data in the 1962 *County and City Data Book*, U. S. Department of Commerce, Bureau of the Census (identified by page, table and item):

In 1960, the rate of unemployment for the United States as a whole was 5.1% (p. 4, Table 1, Item 35). At the same time, the rate for the State of Texas as a whole was much more favorable: 4.5% (p. 4, Table 1, Item 35). The most populous Texas counties along the Mexican border, which are also the counties suffering from the unregulated influx of alien commuters, showed the following rates of unemployment for the same period:

Cameron County (Brownsville) 8.4% (p. 354, Table 2, Item 35)
El Paso County 6.5% (p. 354, Table 2, Item 35)
Hidalgo County (McAllen) 6.3% (p. 364, Table 2, Item 35)
Maverick County (Eagle Pass) 15.1% (p. 364, Table 2, Item 35)
Val Verde County (Del Rio) 6.7% (p. 374, Table 2, Item 35)
Webb County (Laredo) 10.4% (p. 374, Table 2, Item 35)

[6] Illustrative wages paid to commuters in Laredo, according to said Department of Labor Report, were $60 per month for hotel maids, $20 for a 96-hour week for hotel hall boys, $25 per week for drug store cashiers, and $17 per week for grocery checkers, etc. [J.A. 74].

necessarily impairs the domestic power to bargain for better rates." [J.A. 77]

Petitioners, seeking to conduct their own war on poverty in their own communities—poverty directly traceable to the double standard which allows commuters to retain resident status without actual residence—brought this action to obtain judicial review of the commuter program. The Complaint alleged, and petitioners were prepared to prove, that

> "Each of said individual plaintiffs has been unemployed for various periods during the years 1960 and 1961, at a time when commuting aliens with I-151 border crossing identification cards[7] were working at jobs in the United States which plaintiffs were capable of performing. Said plaintiffs are typical and representative of tens of thousands of persons similarly situated along the Rio Grande River who have been unemployed while commuting aliens were working at jobs which residents were capable of performing. . . ." [J.A. 20]

The Complaint also alleged the following:

> "Defendants have largely ignored the provisions of Title 8 U.S.C. §§1101(a)(15)(H) and 1184 as a source of alien labor which can be made available without displacing the employment of workers in the United States. Instead, defendants have knowingly permitted the use of permanent resident alien status by commuting aliens who are residents of contiguous foreign territory. By this 'amiable fiction,' I-

[7] The identification card given *all* immigrants admitted for permanent residence in the United States.

> 151 border crossing identification cards, which are designed solely for issuance to bona fide residents of the United States with a current status of permanent resident alien, are used as a device to permit daily commutation entry of residents of a foreign country for the sole purpose of engaging in employment in the United States. Such use violates the Act, and is in derogation of the letter and intent of said Act regarding use of the express provisions referred to herein above, and also Title 8 U.S.C. §1182(a)(14), for entry of aliens to engage in employment under conditions which will safeguard domestic labor." [J.A. 17]

The trial court dismissed the action without trial on the merits and without opinion. The foregoing allegations in the complaint, however, were never contested. On review, the Court of Appeals held that

> "Assuming the truth of the crucial allegations of the complaint. . . . this is not enough to give the plaintiffs-appellants standing to sue the defendant officials for declaratory and injunctive relief."

Reasons for Granting the Writ

1. The only court which has written on the merits of the issue posed by this case is the District Court for the District of Columbia in *Amalgamated Meat Cutters v. Rogers,* 186 F.Supp. 114 (1960) in which Judge Youngdahl raised this threshold question:

> "Are commuters aliens lawfully admitted for permanent residence? If not, can they be so treated administratively for the limited pur-

pose of permitting their employment in the United States?"

His opinion answered with the applicable statutory definitions:

> "The term 'lawfully admitted for permanent residence' is defined by §101(a)(20) of the Act, 8 U.S.C.A. §1101(a)(20) as:
>
> > 'the status of having been lawfully accorded the privilege of *residing* permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.' (Emphasis added.)
>
> "The term 'residence' is defined by §101(a)(33) of the Act, 8 U.S.C.A. §1101(a)((33) as:
>
> > 'the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent. * * *' "

He therefore concluded and held as follows:

> "With these legislative statements as a guide, it is clear that Mexican commuters do not reside in the United States, and *it therefore is not possible for them to be aliens lawfully admitted for permanent residence.* This should not mean, however, that Mexicans or Canadians cannot commute to work in the United States. *The defendants can utilize the documentary requirements and administrative procedures they think best under the applicable law* [under §§101(a)(15)(H)(ii) and 214] *for*

> *aliens who work in this country and live in Mexico or Canada.* If the defendants are satisfied that an alien can enter the United States to work here, they could then permit the alien to commute." (186 F.Supp. 118-119, emphasis added.)

As in the instant case, the defendant immigration authorities questioned the standing of the plaintiff labor union to bring suit in *Amalgamated v. Rogers,* but the district court overruled that contention.

Significantly, the immigration authorities did not appeal from the decision in the *Amalgamated* case. They complied and followed the Judgment as to all of the commuters who were involved in that action—commuters from Juarez who were working at the strike-bound Peyton Packing Co. in El Paso.[a]

Certiorari should be granted so that the law may be clarified both as to the merits of petitioner's action and as to the standing of a labor union to bring such a suit as a spokesman for working people who are directly affected by the commuter practice. As the law now stands, a final judgment exists in the *Amalgamated* case declaring that it is not possible for commuters residing in Mexico "to be

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[a] One of the published decisions of the Board of Immigration Appeals involves a Peyton commuter who moved to El Paso to retain his immigrant status, but later moved back to Juarez for reasons which dramatically illustrated the economic harm contained in such an unregulated system where an employee may live in a low cost economy yet work in competition with employees who live in a high cost economy. *Matter of J__P__*, 9 I & N Dec. 591 (March 19, 1962). Appellant J__P__ testified that when he and his wife moved to El Paso, "his paycheck, after deductions, was not sufficient to permit him to live in El Paso except under the poorest conditions. Therefore they returned to Juarez."

lawfully admitted for permanent residence," yet the immigration authorities are not giving general application to that interpretation, although that ruling was never appealed. Furthermore, by holding that plaintiffs in the instant action lack standing to sue, the Court of Appeals rendered a determination of the question on the merits impossible, for the practical effect of that court's holding was that the statutory questions raised herein are unreviewable.

2. Unless certiorari is granted, thousands of United States residents along the Mexican border will be left without a remedy. Petitioners at every stage of this proceeding have asked the question: who if not they are more aggrieved by the government's failure to apply the terms of the Immigration and Nationality Act as it was written and as it was intended by Congress?[9]

No one, be it district court, Court of Appeals, government respondents, or intervenor respondents, have supplied an answer. But the answer is obvious: nobody. The Attorney General of the United States is the chief defendant in this action. He is charged by law with the administration of the Act in question, and therefore, it is his acts and his omissions which are questioned herein. The Court

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[9] The 1952 Act, unlike the prior statute, made *permanent residence* a condition for immigrant status. See House Report (H. Report 1365, 82d Cong. U.S. Code & Cong. News, pp. 1678, 1684). The statutory provisions which the immigration authorities should have used to allow entry of aliens for purposes of employment only were provisions enacted in response to the pleas of organized labor to "provide for the protection of American labor against an influx of aliens entering the United States for the purpose of performing skilled or unskilled labor where the economy of individual localities is not capable of absorbing them at the time they desire to enter this country." *Ibid.*, p. 1707.

of Appeals failed to grasp the problem when it wrote that "Normally any challenge to their [the commuters'] status would be brought by the Government officials immediately concerned," for the government officials immediately concerned have obviously refused to act, which is what this case is all about.

As this Court wrote many years ago in another case involving reversal of an administrative interpretation of a statute, in *United States v. Dickson,* 15 Pet. 162, 10 L.ed 689 (1841),

> ". . . it is not to be forgotten that ours is a government of laws and not of men, and that the judicial department has imposed upon it by the Constitution the solemn duty to interpret the laws, in the last resort; and however disagreeable that duty may be, in cases where its own judgment shall differ from that of other high functionaries, it is not at liberty to surrender, or to waive it."

3. The decision of the Court of Appeals conflicts with principles laid down by this Court on the question standing.

In *Bantam Books v. Sullivan,* 372 U.S. 58, 83 S.Ct. 631, 9 L.ed 2d 584 (1963), this Court found standing where "appellants have in fact suffered a palpable injury," which in that case resulted from state action that impaired the sale of books published by appellants. The Court held that distribution of a state commission's notices that certain books were objectionable for sale, distribution or display to

youths under 18 years of age "impaired sales of the listed publications . . . [which] establishes that appellants suffered injury. It was a legal injury. . . ."

In *F.C.C. v. Sanders Brothers Radio Station,* 309 U.S. 470, 60 S.Ct. 693, 84 L.ed 869 (1940), in *Scripps-Howard Radio v. F.C.C.,* 316 U.S. 4, 62 S.Ct. 875, 86 L.ed 1228 (1942), and *F.C.C. v. N.B.C. (KOA),* 319 U.S. 239, 63 S.Ct. 1035, 87 L.ed 1374, this Court "enuncated the principle that one whose only interest in attacking the administrative action is to avoid a new or increased competition has standing to make the attack, even though it is specifically recognized that the attacker has no 'legal right' at stake."[10]

In the instant case, the Court of Appeals relied upon *Tennessee Electric Power Co. v. T.V.A.,* 306 U.S. 118, 59 S.Ct. 366, 83 L.ed 543 (1939), *Alabama Power Co. v. Ickes,* 302 U.S. 464, 58 S.Ct. 300, 82 L.ed 374 (1938), which this Court decided prior to passage of the Administrative Procedure Act, and upon *Kansas City Power & Light Co. v. McKay,* 96 U.S. App. D.C. 273, 225 F.ed 924, in which certiorari was denied, 350 U.S. 884 (1955). The D. C. Court of Appeals had held in the *Kansas City Power* case that §10(a) of the Administrative Procedure Act "is for the benefit of 'any person suffering legal wrong,' that is, one whose legal rights have been violated," but rejected the view that the phrase in the APA, "Any person . . . adversely affected or aggrieved" conferred standing to sue on a competitor who fears adverse economic effects as a result of

[10] Kenneth Culp Davis, Administrative Law Treatise, Vol. 3, p. 221.

official agency action—a view held by Judge Holtzoff in *American President Lines v. Federal Maritime Board,* 112 F.Supp. 346, 349 (1953).

It would appear, from footnote 6 in the *Bantam Books case,* 372 U.S. 64, that Judge Holtzhoff's view is correct; however, the lingering adherence to a narrow reading of Section 10(a), illustrated by the *Kansas City Power* case and the instant case, shows a need for elucidation on the question of whether the *Sanders* doctrine is applicable to all administrative action subject to Section 10(a) of the APA.

Professor Davis[11] has concluded that the *Sanders* doctrine is applicable to all administrative action subject to section 10(a) of the APA, because

> "The Sanders case was decided under a statutory provision allowing review upon application of a 'person aggrived or whose interests are adversely affected, . . . [and] the Administrative Procedure Act allows judicial review upon application of 'Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute. . . ."[12]

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[11] *ibid,* p. 219

[12] The divergence of opinion between such distinguished authorities as Professors Davis and Jaffe [Jaffe, Standing to Secure Judicial Review: Public Actions, 74 Harv. L. Rev. 1265 (1961); Jaffe, Standing to Secure Judicial Review; Private Actions, 75 Harv. L. Rev. 225 (1961)] only points up the need for judicial clarification. Professor Jaffe reads the word "relevant" in §10(a) as seeming "to limit standing clauses in particular statutes to actions under those or perhaps under closely related statutes." (75 Harv. L. Rev. 288) He observes that "If the APA had meant to make the test grievance in fact, most of the provision becomes unnecessary." Davis, however, while noting that the "legislative history is not entirely free from conflicting views" is of the opinion that "The solid part of the legislative history is . . . the statement of the Senate and House committees that one who is 'adversely affected in fact' may challenge administrative action."

Certainly, the interests of plaintiffs in the instant case were *adversely affected* by the agency action but they were also *"adversely affected within the meaning of" the Immigration and Nationality Act of 1952,* a "relevant" statute under Professor Jaffe's analysis.[13] The Court of Appeals may have written in terms of "mere economic competition" for jobs by the plaintiffs, but plaintiffs' grievances were greater than that, for Congress had granted the individual plaintiffs, and the class they represent, *a statutory right to be free of job competitions by aliens* "unless unemployed pesons capable of performing such service or labor cannot be found in this country." §101(a)(15)(H). The original opinion of the Court of Appeals omitted reference to this statutory right, although in response to petition for rehearing the Court stated that

> "We have given full weight to these contentions in reaching our conclusion that the union and the individual plaintiffs have no standing to bring this suit." p. 32a, *infra.*

It did not, however, explain why §101(a)(15)(H) and related sections failed to confer standing on the very persons who were to have been protected by these statutory "safeguards."[14]

The Court of Appeals also failed to reconcile the

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[13] See footnote 12, *supra.*

[14] The House Report on the 1952 Act noted that the bill adopts "a principle of selectivity in the allocation of . . . permits for temporary residence on the basis of the need for labor and services of aliens, . . . [and] provides strong safeguards for American labor." p. 1705, 1952 U.S. Code & Cong. News. See also footnote 9, *supra.*

conflict between its holding in the instant case and its prior holdings in the following cases:

(a) *International Union of Electrical Workers v. United States,* 108 U.S. App. D.C. 97, 280 F.2d 645 (1960), in which labor unions were held to have standing to challenge an Atomic Energy Commission order which authorized construction of a nuclear power reactor. The court held that the unions were "aggrieved" by the action of the Commission. The unions' intervention was based on the contention that building of the reactor would "create a hazard which will place the individual Intervenors, the members of the UAW and their families, and the UAW in danger of an explosion or other incident' damaging to the individuals and their homes, real estate values, and employment; that the value of collective bargaining contracts 'will be seriously impaired if the PRDC reactor is built in this area without reasonable assurances of safety. . . .'" [This case was reviewed by the Supreme Court without consideration of the standing of the unions to bring the action. *Power Reactor Development Co. v. International Union of Electrical Workers,* 367 U.S. 396, 81 S.Ct. 1529, 6 L.ed 2d 924 (1961).]

(b) *National Coal Ass'n v. Federal Power Commission,* 89 U.S. App. D.C. 135, 191 F.2d 462 (1951), in which the Court of Appeals recognized the standing of labor unions representing coal miners and railroad employees to challenge the granting of a Federal Power Commission certificate for construction of a natural gas pipeline, on the basis that their members would lose employment because of the de-

crease in business by the railroads which would result from construction of the pipeline.

(c) *Atchison, Topeka and Santa Fe Ry. Co. v. Somerfield,* 97 U.S. App. D.C. 325, 229 F.2d 777, in which a railroad was held to have standing, based on its investment in special equipment, to challenge validity of three cent airmail postal service.

(d) *Copper Plumbing and Heating Co. v. Campbell,* 110 U.S. App. D.C. 177, 290 F.2d 368 (1961), in which the Court of Appeals held that a company could challenge a listing of its name that had the effect of barring it from future government contracts for three years, on grounds that it was "prohibited from competing on an equal basis with others in the same industry," thus distinguishing the case from *Perkins v. Lukens Steel Co.,* 310 U.S. 113, 60 S.Ct. 869, 84 L.ed 1108, where "plaintiffs could not show 'an injury or threat to a particular right of their own, as distinguished from the public's interest in the administration of the law.' "

The decision of the Court of Appeals in the instant case runs counter to principles contained in the following Supreme Court decisions: *Joint Anti-Fascist Refugee Committee v. McGrath,* 341 U.S. 123, 140-141, 95 L.ed. 817, 71 S.Ct. 624; *Cramp v. Board of Public Instruction,* 368 U.S. 278, 82 S.Ct. 275, 7 L.ed. 285 (1961); *City of Chicago v. Santa Fe R. Co.,* 357 U.S. 77, 78 S.Ct. 1063, 2 L.ed. 2d 1174 (1958); *American Trucking Ass'n v. United States,* 364 U.S. 1, 4 L.ed 2d 1527, 80 S.Ct. 1570.

Cf. *Rusk v. Cort,* 369 U.S. 367, 7 L.ed. 2d 809, 82 S.Ct. 787, in which the Supreme Court announced that "the Court will not hold that the broadly remedial provisions of the Administrative Procedure Act are unavailable to review administrative decisions under the 1952 [Immigration and Nationality] Act in the absence of clear and convincing evidence that Congress so intended." [369 U.S. 379-380].

Conclusion

For the foregoing reasons, petitioners pray that writ of certiorari be granted. The issues posed by this case are of vital immediate importance to thousands of persons and to the economic health of the many communities which border on Mexico.

It is a truism to note that under our constitutional division of powers the executive arm of the government cannot have the final voice in interpreting the meaning of a statute which it administers. Yet, if the plaintiffs herein have no standing to bring an action to review agency determination that affects them in particular, then, as a practical matter, there can be no judicial review of the executive's interpretation of the statute, even though that interpretation relates to a general course of conduct and does not turn on disputed issues of fact.

We have demonstrated the need to clarify the law on standing to bring suit, as affected by the Administrative Procedure Act. We have noted the conflict between the instant decision and principles enuciated by this Court. We have also noted the

conflict with other decisions of the same Court of Appeals. We submit that these are strong and valid grounds for granting the writ. Perhaps most important of all, however, is the necessity that ordinary citizens be able to raise legitimate complaints about governmental action which affects them personally. The courthouse door should not be shut to these plaintiffs, and this is certainly true in the instant case, where the cause of action is meritorious.

Certiorari should be granted on all questions presented, including the third question, for there are no factual issues to determine, and as found by the only court which has passed on the merits of the dispute (in *Amalgamated v. Rogers*, supra), commuters who reside in Mexico do not have the status of aliens admitted for permanent residence in the United States.

Respectfully submitted,

CHARLES J. MORRIS,
1601 National Bankers Life Bldg.,
Dallas 1, Texas
Attorney for Petitioners

Of Counsel:
MULLINAX, WELLS, MORRIS & MAUZY
1601 National Bankers Life Bldg.
Dallas 1, Texas

J. ALBERT WOLL
WOLL, MAYER & ST. ANTOINE
736 Bowen Building
Washington, D. C.

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